

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

BCB AG, LLC

Lyon County, Iowa

**ADMINISTRATIVE
CONSENT ORDER
NO. 2012-AFO-04**

**TO: Bradley J. Baatz
BCB Ag, LLC
P.O. Box 268
Lester, IA 51242**

I. SUMMARY

This administrative consent order (order) is entered into between BCB AG, LLC (BCB) and the Iowa Department of Natural Resources (Department). BCB hereby agrees to ensure that all of its manure applicators are properly certified prior to land application of manure and to pay an administrative penalty. In the interest of avoiding litigation, the parties have agreed to the following provision.

Any questions regarding this order should be directed to:

Relating to technical requirements:

Cindy Martens, Environmental Specialist
IDNR Field Office #3
2300 15th St SW
Spencer, IA 51301
641/424-4073

Relating to legal requirements:

Carrie Schoenebaum, Attorney at Law
Iowa Department of Natural Resources
Wallace State Office Bldg. 502 E. 9th Street
Des Moines, Iowa 50319-0034
Ph: 515/281-0824

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034

II. JURISDICTION

The parties hereby agree that this order is issued pursuant to Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part I, or

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Iowa Code chapter 459 and the rules promulgated or permits issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

The parties hereby agree to the following statement of facts:

1. On October 6, 2010, Cindy Martens, Environmental Specialist Senior with the Department, responded to a complaint which stated that uncertified commercial manure haulers were land applying manure from the Bill Kock facility located in section 5, Doon Township, Lyon County.
2. On October 6, 2010, following receipt of the complaint Ms. Martens went to the site to investigate. Once on site she observed a manure applicator truck labeled Baatz Custom Hauling of Lester, IA # 1103CMS. Ms. Martens spoke to Matt Mulder and Jason Reese and they stated that Brad Baatz was their employer. At that time Mr. Baatz arrived on site. He stated that he had purchased the business from his father and it was now called BCB AG, LLC. Ms. Martens informed him that correct signage is required on all vehicles hauling manure. She then asked for his manure applicator certification card as well as the cards for his employees. Mr. Baatz stated he just sent the check in for the fees, three days prior, and therefore did not have the cards.
3. The Department's files indicated that the certifications for the employees of BCB expired on March 1, 2010. Mr. Reese attended the manure application certification class on February 11, 2010, but had not paid the fees, Mr. Baatz attended class on April 7, 2010, but had not paid the fees and Mr. Mulder had not attended class since March 26, 2009.
4. On October 27, 2010, the Department received the fees for Mr. Baatz and Mr. Reese but Mr. Mulder had not yet attended the required class or taken the manure applicator certification exam.

IV. CONCLUSIONS OF LAW

The parties hereby agree to the following conclusions of law:

1. Iowa Code section 459.103 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations, including certification requirements for hauling manure. The Commission has adopted such rules at 567 IAC chapter 65.

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2. Iowa Code section 459.315(1) states that a person shall not act as a commercial manure service representative unless the person is certified. Iowa Code section 459.315(2) states that a person who is required to be certified as a commercial manure service representative must be certified each year. 567 IAC 65.1 defines a commercial manure service representative as a manager, employee, agent, or contractor of a commercial manure service, if the person is engaged in transporting, handling, storing, or applying manure on behalf of the service. The above stated facts show non-compliance with this provision.

3. 567 IAC 65.19(8) "e" states that

Any vehicle used by a certified commercial manure service or commercial manure service representative to transport manure on a public road shall display the certification number of the commercial manure service with three-inch or larger letters and numbers on the side of the tank or vehicle. The name and address of the certified commercial manure service representative designated as the manager shall also be prominently displayed on the side of the tank or vehicle.

The above stated facts demonstrate non-compliance with this provision.

V. ORDER

THEREFORE, the Department orders and BCB agrees to comply with the following provisions in order to cease, abate, and redress the above-cited violations:

1. BCB shall ensure that all of its employees are properly certified to haul, apply or otherwise handle manure; and
2. BCB shall pay a penalty of \$3,000.00 within 30 days of the date the Director of the Department signs this order.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.
2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty. The

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administrative penalty assessed by this order is \$5,000.00. The administrative penalty is determined in accordance with the following:

Economic Benefit – BCB did not ensure that its employees were properly certified prior to transporting, handling or land applying manure. Therefore BCB has obtained an economic benefit from time saved by not attending the proper class and from costs delayed by not timely paying the necessary fees. Therefore, \$300.00 is assessed for this factor.

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the Department has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. The violations cited in this order threaten the integrity of the regulatory program because compliance with the regulations is required of all persons in this state. The intent of the manure applicator certification program is to educate manure applicators on how to properly land apply manure and how to properly respond to a manure spill. Land application of manure without proper certification increases the risk of a manure discharge and damage to the environment. Based on the above considerations, \$1,000.00 assessed for this factor.

Culpability – Mr. Baatz owns and operates BCB, he has been certified as a commercial manure representative since 2005; therefore at the time of the violation he was well aware of the applicable laws. Despite BCB's knowledge of the certification requirements it failed to ensure that its employees were certified. For these reasons, \$1,700.00 is assessed for this factor.

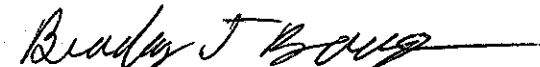
VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.175 and 561 IAC 7.4(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This order is entered into knowingly by and with the consent of BCB. By signature to this order, all rights to appeal this order are waived.

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VIII. NONCOMPLIANCE

Compliance with section V of this order constitutes full satisfaction of all requirements pertaining to the violations described in this order. Failure to comply with this order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.


Bradley J. Baatz

Dated this 20th day of

January, 2012.


Roger L. Lande, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 08 day of

February, 2012.

BCB AG, LLC, Field Office 3, Carrie Schoenebaum; Cindy Martens, I.C. 1., & I.C. 6.a.